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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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MAR 16 2015

**SC Court of Appeals**

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas  
DeAndrea Gist Benjamin, Circuit Court Judge  
Case No. 2013-CP-400-1643

Appellate Case No. 2014-000583

Samuel T. Brick, Appellant

v.

Richland County Planning Commission and Fairways Development, LLC,  
Intervenor, Respondents

**MOTION FOR CLARIFICATION OF ORDER AND RELIEF**

1. Pursuant to the Order of the Honorable Jasper M. Cureton of March 9, 2015, Appellant is required to serve and file an amended record on appeal curing deficiencies listed in Respondent's Motion. The Order specifies four matters that require correction. Appellant requests clarification of three of the four matters.

(A) *FOIA Complaint; Initial Version only or Complaint heard by the Court.* The first specification by Judge Cureton is that Appellant include in the Amended Record the Complaint in Civil Action Number 201-CP-40-7337 filed

on October 31, 2012. The movant requested the complaint already in the Record be removed but the Court did not address this. The movant did not specify this document in its proposed designation of matter for inclusion. Instead it made a broad reference to include what others had requested. Intervenor/Respondent requested only that the complaint in the cited case be included. It did not indicate any date or version. Intervenor/Respondent in its final brief referred to the complaint Appellant included in Record. The included document met Intervenor/Respondent's intent. Respondent/movant made no objection to the included document until Appellant and Intervenor/Respondent had filed their final briefs well after the period in Judge Short's Order for the filing of final briefs. Respondent stated in its Motion that it cites to the document in its initial brief and requires the October 31, 2012, version to file its final brief. Respondent/movant does not mention that reference to the FOIA Complaint was not to any part of the document but only that Appellant initiated a FOIA action with it as a defendant. Appellant had made other objections regarding the Appellant-filed Record but only raised the issue that it required the October 31, 2012, Complaint after Appellant had filed his final briefs and an Amended Record addressing his previous issues. Respondent/movant requested not only that the October document be included but that the version Intervenor cited in its final brief which Appellant included in the Record pursuant to its request and which is acknowledged by Appellant in his briefs be deleted from the Record altogether. Appellant seeks clarification from the Court as to whether the amended and

supplemented version of this complaint to which Appellant and Intervenor/Respondent have argued be deleted as requested by Respondent or whether just the October 31, 2012, version of the Complaint be added to the Amended Record. Appellant is concerned that Intervenor/Respondent may object to the version Respondent requests. Appellant believes that the version Respondent is demanding fails to appreciate the full quality and concerns of the litigated complaint. Appellant seeks clarification of this matter. Is the October version in addition to or in lieu of what is in the Record?

Appellant notes that Respondent has not filed its final brief in this matter. It stated in its motion it cannot do so because it cited the FOIA complaint and needs it included before he can make an appropriate reference. The actual statement Respondent/movant relies on in its initial brief to plead inability to follow the Order of Judge Short and file its final brief and SCACR 240(b) regarding stays of motions is:

“Finally, Brick’s collateral estoppel argument is unequally unavailing. He argues that Fairways sought to be dismissed as a party-defendant in a FOIA action brought against Richland County. See, *Brick v. Richland County*, Civil Action Number 2012-CP-40-7337.”<sup>1</sup>

Intervenor/Respondent requested the FOIA action brought against Richland County be included in the Record and it was. Respondent/movant makes no

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<sup>1</sup> Noting unequally unavailing, the citation is as it was presented.

reference to the content on that Recorded version, only that such a FOIA complaint is filed.

(B) *Exclusion of matters not in existence at the time the appeal was filed.*

Respondent moved for the exclusion of documents not in existence when the appeal was filed. He cites an affidavit of R. Steve McNair dated May 22, 2014, stating that McNair is the owner of the property being developed and accordingly, not Fairways Development, LLC. Respondent refers to pages 222-233 being documents that were filed with the motion. Mr. McNair's affidavit, however, is only on pages 222-224. Although the other documents were filed as part of the motion, they are not included in the Record or Amended Record to refer to or to qualify the stay motion. Appellant included the documents as public records to which the appellate court could take judicial notice. They refer to relevant facts regarding ownership of the property that were in existence well before this appeal was filed but were not brought to the attention of the trial court but known to Intervenor/Respondent. Appellant did not know of these facts and, as mentioned below, had no reason to contest the assertions of counsel for the respondents that the Intervenor was owner of the property. Pages 225-226 are Richland County public tax records stating owner information regarding the portion of the property that is planned for initial development in the project, the object of Appellant's complaint. Pages 227-228 are a copy of a deed by Respondent to Longcreek Associates, LLC, of the tract of land being developed pursuant to the project as contained in the Richland County Register of Deeds Office. Pages 229-233 are a

public record published on the internet of the Development that suggest ownership data with a phase one portion representing what is intended for initial development. The Page 231 phase one sketch is dated August 29, 2012. The deed is dated December 13, 2012. This information shows an intent that Intervenor/Respondent did not intend to develop the property. The permit for the project is dated December 7, 2012. Appellant merely included the affidavit by Mr. McNair to indicate the removal of the stay motion was the first time he knew about the real ownership of this portion of the project. Intervenor/Respondent filed the motion just after Respondent filed his initial brief in this appeal to hamper Appellant's ability to present this information to the court. Appellant had no reason to question Intervenor/Respondent and Respondent's many allegations that Intervenor/Respondent was the owner of the project. Tax records and recorded deeds normally are indisputable. In Wise v. Wise, 394 S.C. 591, 601, 716 S.E.2d 117 (Ct. App. 2011), this Court held original judicial notice of adjudicative facts at the appellate level should be limited to matters which are indisputable. Aside from the fact that Intervenor/Respondent and Respondent had a duty to advise the trial court of this not just relevant but vital ownership issue, they withheld the information regarding change in ownership from the trial court in the determination of need for Intervenor/Respondent's inclusion in the case. The respondents' specific statements and clear inferences throughout the hearing are that Fairways Development, LLC is *the* owner of the property being developed. The statements are misleading and border on intrinsic fraud. In

Fairways Motion to Intervene the statement is that Fairways owns the property which is the subject of Brick's appeal. In fact the recorded deed shows it had sold off the portion that was scheduled to be developed when the statement was made. In the transcript of the trial court hearing, Intervenor/Respondent through its attorney stated to the trial court while referring to its client, "Their property was the property that sought to rezoning." (Page 10, lines 6-7 of the transcript). Besides the misstatement regarding ownership, the matter involved not rezoning but land development. Respondent at Page 13, lines 9-10 of the transcript, through its attorney, states that Mr. Ward's client is developing the project when in fact Mr. Ward's client had sold the property. The relevance of this is what is meant in Judge Cureton's Order by excluding matters that were not in existence at the time the appeal was filed. The matters at pages 225-233 were in existence at the time the appeal was filed. Aside from that, they are relevant facts the Court may take judicial notice of as enunciated in the Wise case, cited above. In the face of persistent intrinsic misrepresentations throughout this proceeding by counsels for the Respondents, such judicial notice would provide the court a more accurate representation of the indisputable facts in this case.

Appellant notes that South Carolina law at Section 6-29-1190 provides that transfer of title being developed without recording the plan or plat with the registrar of deeds is a criminal violation. Aside from Appellant's expectations of veracity with regard to statements of opposing counsel, Appellant should not be held responsible to determine whether an owner of property violated criminal law

and sold unregistered property upon receipt of an approved land development plan. Appellant accordingly seeks clarification of the Order with regard to whether just removal of Mr. McNair's affidavit from the Amended Record satisfies Judge Cureton's direction not to include matters that were not in existence at the time the appeal was filed.

(C) *Submission of Exhibit.* In accordance with the last sentence of SCACR 210(f), Appellant requested the Clerk of Court's retrieval of the CD Judge Short ordered included in the Amended Record as Appendix A-3 to Appellant's Complaint. Appellant seeks clarification that this meets the expectations of Judge Cureton's Order of March 9, 2015. Appellant notes that the CD was never introduced into evidence in the proceeding before the trial court. Its request for inclusion in the Record was by Respondent Richland County Planning Commission.

2. Appellant requests relief to include the document provided in the Supplemental Record in the Amended Record, relief regarding amending or filing again the Final Briefs filed by Appellant and Intervenor/Respondent, and designation of a time frame in which to comply with or be relieved from Judge Short's Order and to prepare and file revised final briefs.

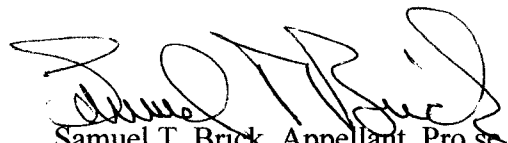
(A) *Supplemental Record, Time for Filing, and other ministerial matters.* Appellant seeks relief to include the material filed in the Supplemental Record in the Amended Record he is directed to file as well as authority either to make pencil corrections on the filed final briefs or additional time to correct the briefs to

comport with the revisions in the Amended Record. In that regard, Appellant seeks relief from the requirement of SCACR 211(b) that the final briefs be identical to the briefs previously served under Rule 208. Appellant must remove references to the stay removal motion and adjust Record references in the final briefs that are changed with the exclusion of the hyphenated numbers by renumbering of the Amended Record pages pursuant to Judge Cureton's Order. Such changes would not have been necessary had Respondent noted his objections to the Record in a timely manner rather than waiting until after the period within which the parties were required to file their final briefs had expired.

(B) *Relief from Order's Thirty-Day Filing Period.* Appellant further requests relief from the thirty day period provided in the March 9, 2015, Order. Appellant requests suspension of such period until clarification is made regarding the matters mentioned in this Motion and a period be designated within which to file the amended final briefs after Appellant files the Amended Record.

AND FOR SUCH OTHER AND FURTHER RELIEF AS THIS  
HONORABLE COURT DEEMS NECESSARY AND PROPER.

Respectfully submitted,

  
Samuel T. Brick, Appellant, Pro se  
124 Runnymede Drive  
Blythewood, SC 29016  
803 546 4895  
sbrick2011@gmail.com

March 16, 2015

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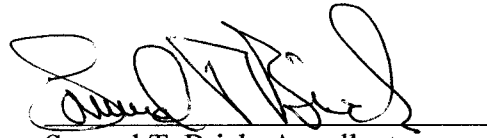
**Richland County Planning Commission and Fairways Development, LLC,  
Intervenor, Respondents**

**CERTIFICATE OF SERVICE**

Samuel T. Brick, Appellant pro se hereby certifies that the undersigned Appellant, pro se, served a Motion for Clarification of Order and Relief upon the parties to this action by depositing a copy of same, enclosed in a First Class postpaid envelope addressed to the attorneys of record in a post office or official postal depository under the exclusive care and custody of the United States Postal Service, on March 16, 2015, addressed in the following manner:

Andrew F. Lindemann, Esquire  
Michael B. Wren, Esquire  
Davidson & Lindemann, P.A.  
P.O. Box 8568  
Columbia, S.C. 29202-8568  
Attorneys for Respondent

Tobias G. Ward, Jr., Esquire  
J. Derrick Jackson, Esquire  
Post Office Box 6138  
Columbia, SC 29260  
Attorneys for Intervenor/Respondent

A handwritten signature in black ink, appearing to read 'Samuel T. Brick', written over a horizontal line.

Samuel T. Brick, Appellant, pro se  
124 Runnymede Drive  
Blythewood, SC 29016  
803 546 4895  
[sbrick2011@gmail.com](mailto:sbrick2011@gmail.com)

March 16, 2015

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

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SC Court of Appeals

HAND DELIVERED: March 16, 2015

Re: Appellate Case Number 2014-000583, Samuel T. Brick, Appellant v. Richland County  
Planning Commission and Fairways Development LLC, Intervenor, Respondents

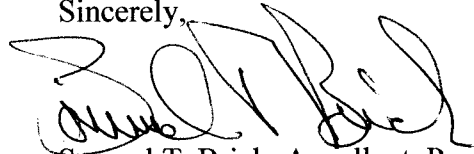
Dear Ms Kitchings:

Enclosed for filing is Appellant's Motion for Clarification of Order and Relief. A \$25 Check to  
your order also is provided.

If you have any other concerns or questions, please advise.

Thank you for your assistance in this matter.

Sincerely,



Samuel T. Brick, Appellant, Pro se  
124 Runnymede Drive  
Blythewood, SC 29016  
803 546 4895  
[sbrick2011@gmail.com](mailto:sbrick2011@gmail.com)

Enclosures;  
As Stated.

cc:

Tobias G. Ward, Jr. and J. Derrick Jackson (Counsel for Intervenor, Respondent)  
Andrew F. Lindemann and Michael B. Wren, Davidson & Lindemann, P.A. (Counsel for  
Respondent, Richland County Planning Commission).